



Rep. Angelo Saviano

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LRB094 03453 LCB 44461 a

1 AMENDMENT TO HOUSE BILL 868

2 AMENDMENT NO. _____. Amend House Bill 868 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Mortgage Lender's Closing Duties Act.

6 Section 5. Definitions. As used in this Act:

7 "Residential real estate", "lender", "borrower", "mortgage
8 loan", "residential mortgage loan", "loan broker", "loan
9 originator", "loan originating", "residential mortgage loan
10 commitment", and "escrow agent" are defined as in the
11 Residential Mortgage License Act of 1987.

12 "Loan package" refers to any and all documentation tendered
13 by a lender reasonably necessary to effectuate the escrow
14 closing, the execution of which by the borrower shall permit
15 the immediate disbursement of mortgage loan proceeds.

16 "Escrow closing" refers to the process of accepting escrow
17 funds and a loan package by an escrow agent on a residential
18 mortgage loan and the final disbursement of those funds, along
19 with the borrower's down payment, if any, and the acceptance of
20 documents from the seller of the residential real property
21 sufficient to transfer title (legal or equitable) to the
22 subject property to the borrower; and the simultaneous transfer
23 of the balance of such funds as may be due to the seller, or as
24 the seller and borrower may direct, and the delivery of the

1 documents from the seller to the borrower, including, if
2 applicable, the placing for recording of the deed or other
3 document intended to place the borrower in title to the subject
4 residential real property.

5 "Investor" refers to the entity that invests money in
6 residential mortgage loans, or ultimately provides funding
7 necessary to close a residential mortgage financing
8 transaction.

9 "Funding" and "good funds" refer to the monetary
10 consideration provided by a lender incident to and simultaneous
11 with the closing of a "residential mortgage financing
12 transaction", as that term is defined and used in the
13 Residential Mortgage License Act of 1987, and shall consist of
14 cash, a cashier's check or checks, a certified check or checks,
15 a money order or money orders, or the electronic transfer to
16 the escrow agent of such cash, cashier's check or checks,
17 certified check or checks, or money order or orders, but do not
18 include a bank draft or drafts or the electronic transfer to
19 the escrow agent of a bank draft or drafts, nor any other form
20 of funding containing conditions precedent to the negotiation
21 of that funding.

22 "Firm written commitment for mortgage loan financing"
23 means a non-contingent written agreement to lend to a borrower
24 good funds secured by a mortgage against a specific parcel of
25 residential real property and which shall, at a minimum, state
26 the amount of the loan, the rate of interest per annum, the
27 annual percentage rate, and any loan origination and loan
28 discount fees, and shall be subject to only the following
29 conditions:

30 (1) no material changes in the borrower's financial
31 condition;

32 (2) the lien of the mortgage being insured by a
33 licensed title insurance company as the first and paramount
34 lien against the residential real property;

- 1 (3) matters of survey;
- 2 (4) homeowner's insurance satisfactory to the lender;
- 3 and
- 4 (5) the mortgage being funded by a date certain.

5 Section 10. Provision of loan documents. A lender or
6 investor who has issued a firm written commitment for mortgage
7 loan financing, upon receiving reasonable notice prior to the
8 closing from the buyer, the seller, or the escrow closing
9 company of the date, time, and location of the closing of the
10 purchase and sale of 1-4 family, owner-occupied residential
11 real estate, must provide to the escrow closer the mortgage
12 loan documents or loan package at the time, date, and place for
13 the closing for execution by the borrower and reasonably sought
14 by that lender as a precondition to the disbursement of
15 mortgage loan proceeds.

16 Section 15. Provision of loan funds. A lender or investor
17 who has issued a firm written commitment for mortgage loan
18 financing, upon receiving reasonable notice from the buyer, the
19 seller, or the escrow closing company of the date, time, and
20 location of the closing of the purchase and sale of 1-4 family,
21 owner-occupied residential real estate must provide to the
22 escrow closer the necessary funding for the mortgage loan in
23 the form of "good funds" at the time, date, and place for the
24 closing for use by the borrower incident to the purchase and
25 sale transaction. Incident to the funding of that mortgage
26 loan, any lender intending to utilize an electronic transfer of
27 funding shall first secure any necessary wire transfer
28 instructions from the escrow closer and shall advise the
29 borrower or the borrower's designee in writing of its intention
30 to transfer the funding for the transaction via electronic
31 means and shall institute that electronic transfer in
32 sufficient time so that the necessary funding will be received

1 by the escrow closer prior to the time and date of the escrow
2 closing.

3 Section 20. Fees to cover lender's fines prohibited. A
4 lender or investor who has issued a firm written commitment for
5 mortgage loan financing, upon receiving reasonable notice from
6 the buyer, the seller, or the escrow closing company of the
7 date, time, and location of the closing of the purchase and
8 sale of 1-4 family, owner-occupied residential real estate may
9 not charge or attempt to charge to the borrower a fee or
10 anything of value to offset such costs as may be incurred by it
11 as a result of the violation by the lender of any provision of
12 this Act.

13 Section 25. Notice to investor. A notice of closing as
14 described in this Act that is provided to a loan originator or
15 loan broker shall be deemed to constitute notice to any
16 investor.

17 Section 30. Closing package.

18 (a) A lender who has issued a firm written commitment for
19 mortgage loan financing shall deliver a loan package and the
20 closing funds to the title company only after:

21 (1) the lender confirms with the title company that the
22 lender's commitment requirements have been satisfied or
23 will be satisfied at the closing and a closing can be
24 scheduled; and

25 (2) the lender receives written notice from the title
26 company that the buyer's and seller's representatives have
27 confirmed their readiness to close at the appointed time.

28 (b) If the provisions of subsection (a) of this Section
29 have been met, the lender shall deliver the loan package to the
30 title company no later than 30 minutes prior to the scheduled
31 closing. The closing funds shall be in the escrowee's

1 possession no later than the scheduled time of closing.

2 Section 35. Delay of closing; loss.

3 (a) If the lender has complied with the provisions of
4 Section 30 of this Act and the transaction does not close on
5 the scheduled closing date, the buyer shall pay the lender the
6 amount of the lender's loss incurred by reason of the delay in
7 closing. If the transaction never closes, the buyer shall pay
8 the lender the additional charges incurred by the lender as a
9 result of the early funding requirement.

10 (b) A buyer who has been required to compensate a lender is
11 entitled to reimbursement of any amount paid to the lender for
12 its loss due to a delay or failure to close that is
13 attributable to the seller or any other party.

14 Section 40. Violations. A loan originator or loan broker or
15 an investor who violates this Act are jointly and severally
16 liable to the borrower for the greater of actual damages
17 incurred by the borrower on account of the violation or
18 violations or \$1,000 per occurrence, plus reasonable
19 attorney's fees.

20 Section 45. Exemption. This Act does not apply to an exempt
21 entity as defined in the Residential Mortgage License Act of
22 1987.

23 Section 50. Application. The provisions of this Act apply
24 to purchase money mortgages only."